



Paper No. 3

ALEX CHARTOVE
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
1333 NEW HAMPSHIRE AVENUE, N.W., SUITE 400
WASHINGTON, DC 20036

COPY MAILED

OCT 15 2001

OFFICE OF PETITIONS

In re Application of
Dr. David H. McDaniel
Application No. 09/819,082
Filed: February 15, 2001
For: Process for Inhibiting Activity, Reducing Size
and Destroying Growth of Sebaceous Gland

:
: DECISION GRANTING
: PETITION
:
:

This is a decision on the petition filed June 4, 2001, requesting that a divisional Continued Prosecution Application (CPA) (identified in the petition by attorney docket No. 509582000210), deposited February 15, 2001, based on prior application No. 09/203,178 be treated as a divisional application under 37 CFR 1.53(b), rather than under 37 CFR 1.53(d), and be accorded a filing date of February 15, 2001.

The application papers filed February 15, 2001, and identified by attorney docket No. 071340.0018, requested treatment as a CONTINUED PROSECUTION APPLICATION (CPA) under 37 CFR 1.53(d) based on prior application No. 09/203,178. The petition filed June 4, 2001, states that the applicant mistakenly requested a filing under 37 CFR 1.53(d), but a filing under 37 CFR 1.53(b) was intended. Accordingly, the applicant requests that the application be treated as a divisional application under 37 CFR 1.53(b).

It is noted that the application papers filed February 15, 2001, included a complete specification and drawings. Therefore, the papers are presently complete for filing date purposes under 37 CFR 1.53(b). The application papers filed February 15, 2001, were filed while the prior application was still pending. The prior application No. 09/203,178 issued as U.S. Patent No. 6,283,956 on September 4, 2001.

Therefore, on petition, the application papers filed on February 15, 2001, will be treated as a divisional application filed under 37 CFR 1.53(b).

The petition is granted.

The 37 CFR 1.53(b) application has been assigned application No. 09/819,082.

A courtesy copy of this decision is being mailed to the address identified in the petition. However, it is noted that the correspondence address for the present application is contained in the application papers filed February 15, 2001. The Customer Number identified in the transmittal letter is not a valid Customer Number. No further communications will be mailed to the address provided in the petition unless a power of attorney/change of correspondence address is filed.

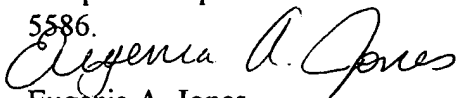
It is noted that an oath or declaration under 37 CFR 1.63 is missing. Applicant is given **TWO MONTHS** from the mailing date of this decision to file an oath or declaration in compliance with 37 CFR 1.63 and the surcharge set forth in 37 CFR 1.16(e) for the late filing of the oath or declaration. Extensions of time under 37 CFR 1.136(a) are available. The response should be directed to the attention of Initial Patent Examination Division. Failure to file a timely response will result in the **abandonment** of the application.

It is noted that the filing fee paid for the instant application was applied in prior application No. 09/203,178. The fee should be applied in application No. 09/819,082.

After mailing of this decision, USPTO records will be corrected to show that the \$355.00 filing fee paid on February 15, 2001, was paid in application No. 09/819,082, not in application No. 09/203,178, and for charging the \$130.00 petition fee to deposit account No. 03-1952, as authorized in the petition.

The application will then be forwarded to Initial Patent Examination Division for further processing as a divisional application filed under 37 CFR 1.53(b), not under 37 CFR 1.53(d), with a filing date of February 15, 2001, using the application papers filed on February 15, 2001, and the oath or declaration filed in response to this decision.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 306-5586.



Eugenia A. Jones
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

EJ/vb

cc: JONATHAN BOCKMAN ✓
MORRISON & FOERSTER LLP
2000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-1888